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PUBLIC UTILITIES  
BOARD OF PUBLIC UTILITIES

Regulations of Cable Television  
Complaint Recording and Reporting  
Proposed New Rule: N.J.A.C. 14:18-6.7

Authorized by: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Commissioner; Carol J. Murphy, Commissioner, Connie O. Hughes, Commissioner and Jack Alter, Commissioner)

Authority: N.J.S.A. 48:5A-10

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: CX04010007

Proposal Number: PRN 2004-77

A public hearing concerning the proposal will be held on Monday, March 29, 2004 at 10:30 A.M. at:

Board of Public Utilities  
Hearing Room, 8th Floor  
Two Gateway Center  
Newark, NJ 07102

Submit written comments by April 30, 2004 to:

Celeste M. Fasone, Director  
Office of Cable Television  
Two Gateway Center  
Newark, NJ 07102

The agency proposal follows:

### **Summary**

As required by statute, specifically, P.L. 2003, c.38, which became effective on August 12, 2003, the Office of Cable Television (OCTV) is proposing a new rule which will require the State's cable television operators to collect, retain, present for inspection and submit data on complaints received from their customers. Proposed section (a) requires a cable television operator to keep a record of complaint data for at least one year beyond the close of a calendar year of the report required to be submitted to the OCTV in section (g) below, and requires that the record to be kept include the name and address of the customer, the nature of the complaint, the corrective action taken and the disposition of the complaint, as mandated by statute.

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Proposed section (b) deals with the privacy provisions of State and Federal law when the Board seeks verification of these reports. The Board implemented the statutory provisions in a Board Order issued on August 18, 2003, in Docket No. CX03080615, and has taken action here to incorporate similar provisions within the Administrative Code. The Board issued an Order of amendment to its August 18, 2003 Order on December 17, 2003. The purpose of this amendment was to make certain clarifications to the original Order to insure that the privacy of subscriber information collected by a cable television company is held to the necessary privacy standards. 47 U.S.C.A. § 551 provides protection over the collection and disclosure of subscriber information. Under federal law, a cable television company may not disclose personally identifiable information about a subscriber to a third party without the prior written or electronic consent of the subscriber. 47 U.S.C.A. § 551(c)(1). In addition, federal law appears to forbid disclosure to public agencies and other governmental authorities without either express consent of the individual or a court order. 47 U.S.C.A. § 551(h). Additionally, the State's Cable Subscriber Privacy Protection Act, N.J.S.A. 48:5A-54 et seq., is also implicated. In light of the privacy requirements imposed upon the uses of subscriber information, this rule is proposed to require cable television companies in the State to meet the requirements of P.L. 2003, c.38 without violating federal privacy requirements through the release to any third party of personally identifiable customer information without the customer's approval. Proposed section (b) specifically codifies how and when cable television operators must seek permission from each of its customers on a yearly basis, and upon new request for service, for the release of personally identifiable information in order that the cable television operator may collect, retain and submit the information to the OCTV in its yearly report as required by proposed section (g) to the OCTV. A customer does not have to grant consent to release his or her personal information but failure to obtain consent from the customer does not relieve a cable television operator from collecting, retaining, presenting for inspection and submitting the customer's complaint information; however, all personally identifiable information must be redacted.

Proposed section (c) provides that OCTV and Board staff may at any time inspect all complaint records of the cable television company as required by statute.

Proposed section (d) requires that all complaint records available for inspection where the company has obtained permission to release personally identifiable information must contain that personally identifiable information; if the cable television operator has failed to obtain release of personally identifiable information, that information shall be redacted from the record prior to inspection. Proposed section (e) requires, as mandated by statute, that each cable television operator must provide to OCTV staff, upon request, copies of all complaint records, which shall contain the personally identifiable information where the cable television operator has obtained release and shall not, where the cable television has not obtained release.

Proposed section (f) provides that the Board may order a cable television operator to utilize other methods if needed to ensure that customers are provided with adequate opportunity to provide consent for release of personally identifiable information and to ensure that the Board receives the information collected under proposed section (a).

Proposed section (g) requires each cable television company to file with the OCTV on or before January 31st a detailed report of the information collected under proposed section (a) above. The director of the OCTV shall prescribe a form on which the complaints shall be

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submitted. In general, the form will characterize the types of complaints and will use a uniform reporting methodology that will contain the information on those matters which the director of the OCTV may from time to time prescribe. Proposed section (h) requires that all reports submitted under proposed section (g) must comply with State and federal subscriber privacy laws. Proposed section (i) requires that, pursuant to statute, the report required to be filed under proposed section (g) shall be forwarded to the Governor and members of the Legislature by the OCTV within 30 days of receipt of the reports.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and N.J.A.C. 1:30-3.2 governing rulemaking calendars.

### **Social Impact**

The proposed new rule requires cable television companies to record all complaints received at their offices and file copies of the reports with the OCTV and the Legislature. The proposed new rule will assist the OCTV in its day-to-day responsibility as complaint officer for most of the State's 562 franchised municipalities. It will allow the OCTV to determine where remedial action is required in any area of Board jurisdiction.

These rules will enable the Board in its statutory mandate to promote harmony between cable television companies and their customers by better identifying service problems and working to help resolve them. It also ensures compliance and accuracy in reporting without compromising State and Federal cable subscriber privacy protections.

### **Economic Impact**

The proposed new rule imposes no direct or specific costs. It is probable that a cable television company may need to modify its reporting mechanisms of how complaints are collected and retained. Thus, it may have some additional impact on operating costs, which may, to the extent permitted under Federal cable television rate regulations, be passed on to the customer. Cable television companies already track complaints as part of their existing operations.

All reasonable levels of expenses incurred by cable television companies in complying with this collection and reporting requirement will be considered to be a business expense, recoverable through rate and cost of service proceedings. Costs that may be incurred include those of an administrative nature for the collection and reporting. It is also anticipated that some added training of customer assistance staff may be necessary. Modification of computer recording screens may be necessary and for cable television companies that do not employ information technology staff or have information technology personnel on retainer, some professional services may be necessary. The costs of these services are, again, considered business expenses recoverable through rate and cost of service proceedings.

Added costs for an additional mailer on a yearly basis may be incurred to seek permission from customers for release of personally identifiable information; however, the proposed rule does not require this to be by separate direct mail and can therefore be part of

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the annual notice and/or as a bill insert required under 14:18-3.18(a). If the cable television operator were to provide each of its customers a separate mail notification, any cost incurred would be considered business expenses recoverable through rate and cost of service proceedings.

However, with the importance of the rule and the mandate by the Legislature, the Board believes that, in light of the absence of a competitive market to preserve the public interest, the benefits from the rule exceed the burdens of the costs.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:18-6.7 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for this proposal.

### **Agriculture Industry Impact**

The proposed new rule has no impact on the agricultural industry.

### **Jobs Impact**

It is not anticipated that the proposed new rule will result in the creation of new jobs or the loss of existing jobs. The proposed new rule will not have an impact on any other sector of the economy of the State of New Jersey.

### **Regulatory Flexibility Analysis**

While the proposed new rule will apply to all cable television companies, only two are defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As the Legislature did not make exceptions for small businesses in its enactment, the Board does not find any reason to distinguish between large and small businesses. In addition, the Board, as the official complaint officer for most of the State's municipalities, believes that these rules are of significant import to the regulation of cable television within the State such that it should apply to all cable television companies.

In addition, it is not anticipated that the proposed new rule would require any additional initial capital costs other than those normally associated with the construction and operation of a cable television system. These are not expected to be unreasonable.

It is not expected that a cable television operator would need professional services in order to comply with the proposed rule, except as discussed in the economic impact statement

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above. It is expected that current staff of the cable television company would be able to manage all requirements of the proposed rule without outside help.

### **Smart Growth Impact**

The Board is of the opinion that the proposed rule will have no impact on either the achievement of smart growth or the implementation of the State Plan.

**Full text** of the rules may be found in the New Jersey Administrative Code at N.J.A.C. 14:18.

**Full text** of the proposed new rule follows:

#### 14:18-6.7 Complaint recording and reporting

(a) Each cable television company shall keep, for at least a period of one year beyond the close of the calendar year of the report in (g) below, a record of all complaints received at its offices, which shall include the name and address of the customer, the date, the nature of complaint, any corrective action taken, and the final disposition of the complaint.

(b) Each cable television company shall seek, collect and document consent from each customer for the release of personally identifiable information, as defined by N.J.S.A. 48:5A-55(d), to the Board and to the Office, as follows:

1. Upon a new request for service, the cable television company shall seek the customer consent required under this subsection as part of the process of taking the necessary information for the account;

2. At least once per calendar year, the cable television company shall notify customers that the customer may provide the consent required above. The notice may be given through a bill insert, bill notice, direct first class mailing or through another manner if specifically directed by the Board. This notice shall, at a minimum, provide the customer with a method of responding to the cable television company so that consent can be recorded and retained by the cable television company. The method of response may be in either a physical or electronic format; and

3. The cable television company shall obtain the approval of the Office for the notice required under this subsection prior to sending the notice to customers; and

4. A refusal on the part of a customer to provide consent does not release the cable television company from the requirements for recording, retaining and reporting all complaints received in accordance with this section, except as provided in (d) and (e) below.

(c) The cable television company shall make all complaint records available at any time for inspection by the staff of the Board or the Office.

(d) All complaint records available for inspection, which involve a customer for whom the cable television company has obtained release of personally identifiable information, shall contain said personally identifiable information. If a complaint record involves a customer for

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whom the cable television company has not obtained release of personally identifiable information, the cable television company shall redact that information prior to inspection under (c) above.

(e) The cable television company shall provide copies of all complaint records to the staff of the Board or Office upon request. All complaint records so provided, which involve a customer for whom the cable television operator has obtained release of personally identifiable information, shall contain said personally identifiable information. If a complaint record involves a customer for whom the cable television operator has not obtained release of personally identifiable information, the cable television company shall redact that information prior to providing the copy.

(f) The Board may order a cable television company to utilize other methods, as necessary, to:

1. Ensure that customers are provided with adequate opportunity to provide consent for the release of personally identifiable information to the Board and the Office; and/or

2. Ensure that the Board receives the information described under (a) above.

(g) Each cable television company shall furnish to the Office annually, on or before January 31, a detailed report of the number and character of complaints made by customers and communicated to the cable television company during the previous year. This report shall be submitted on a form prescribed by the director, which shall use a uniform reporting methodology and shall require information containing those matters as the Office may from time to time prescribe.

(h) All reports submitted to the Office shall comply with the State's "Cable Subscriber Privacy Protection Act", N.J.S.A. 48:5A-54 et seq. and the federal "Protection of Subscriber Policy", 47 U.S.C.A. § 551.

(i) The Office shall forward copies of the reports required under (g) above to the Governor and members of the Legislature by the Office within 30 days of receipt of the reports.